

CERTIFICATE OF TRANSMISSION OR MAILING

I hereby certify that this correspondence is being transmitted by either the electronic filing system of the US Patent Office known as EFS-Web, fax to the U.S. Patent and Trademark office to fax number 571-273-8300, or is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 to on November 24, 2008.

/Brian C. Kunzler/  
Attorney for Applicant

PATENT  
Docket No. SJO920030067US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant: Joseph J. Fatula, Jr.

Serial No.: 10/735,938

Filed: December 15, 2003

For: **APPARATUS, SYSTEM, AND METHOD FOR  
AUTONOMIC CONTROL OF GRID SYSTEM  
RESOURCES**

Group Art  
Unit: 2141

Examiner: Nicholas R. Taylor

**REPLY BRIEF**

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Examiner:

The USPTO received Appellant's timely Appeal Brief on August 20, 2008 (Appeal Brief), which was filed in response to the Notice of Appeal filed on June 5, 2008, which was filed in response to the Final Office Action mailed February 5, 2008.

This Reply Brief is being filed under the provisions of 37 C.F.R. § 41.41 and in response to the Examiner's Answer mailed September 24, 2008 (Examiner's Answer). Appellant continues to appeal the rejection of pending claims 1-9 and 20-35.

**1. REAL PARTY IN INTEREST**

The Examiner's Answer agrees with the recitation for this section in the Appeal Brief.

**2. RELATED APPEALS AND INTERFERENCES**

The Examiner's Answer agrees with the recitation for this section in the Appeal Brief.

**3. STATUS OF CLAIMS**

The Examiner's Answer agrees with the recitation for this section in the Appeal Brief.

**4. STATUS OF AMENDMENTS AFTER FINAL**

The Examiner's Answer agrees with the recitation for this section in the Appeal Brief.

**5. SUMMARY OF CLAIMED SUBJECT MATTER**

The Examiner's Answer agrees with the recitation for this section in the Appeal Brief.

## **6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The Examiner's Answer agrees with the recitation for this section in the Appeal Brief.

## **7. CLAIMS APPENDIX**

The Examiner's Answer agrees with the recitation for this section in the Appeal Brief.

## **8. EVIDENCE RELIED ON**

The Examiner's Answer agrees with the recitation for this section in the Appeal Brief. The references include "Dynamic virtual clusters in a grid site manager" by Chase et al. June 22, 2008, 12<sup>th</sup> IEEE International Symposium on High Performance Distributed Computing, pp. 90-100 (hereinafter Chase); "SHARP: An Architecture for Secure Resource Peering" by Fu et al. October 19<sup>th</sup> 2003, ACM SOSP, pp. 133-148 (hereinafter Fu).

## **9. GROUNDS OF REJECTION**

The Examiner's Answer maintains substantially the same grounds of rejection for claims 1-9 and 20-35.

## 10. ARGUMENT

**I. The rejection of claims 1-9 and 20-35 under 35 U.S.C. §103(a) as obvious in view of Chase and Fu is improper because Chase and Fu fail to teach each element of claims 1-9 and 20-35.**

### Summary of the Examiner's Answer (A) in relation to this argument

[001] The Examiner contends that Fu teaches the use of probabilities to implement policies that predict future system performance and act accordingly and so discloses a system prediction policy. Examiner's Answer, page 10, lines 17-18. In particular, the Examiner argues that Fu's disclosure of oversubscribing and undersubscribing resource tickets as being a predictive function by managing the future. See Examiner's Answer, page 10, lines 12-17. Fu, page 136, section 2.2.

### Response

[002] Appellant disagrees and respectfully reaffirms the arguments raised against the rejection of claims 1-9 and 20-35 under 35 USC §103(a) set forth in the Appeal Brief. Fu allows agents to issue resource tickets even if resource tickets are oversubscribed. Fu, page 136, col. 1, lines 27-29. This oversubscription and corresponding undersubscription is not predictive and so is not a predictive policy.

[003] In Fu, resource tickets have a probabilistic characteristic; they may or may not be honored. Fu, page 136, col. 1, lines 37-40. Oversubscription is allowed to improve resource utilization. Fu, page 136, col. 1, lines 31-34. An agent may issue too many resource tickets, but if the resource tickets are not honored, the agent will be held accountable. Fu, page 136, col. 1,

lines 50-60. However, there is no prediction as to whether oversubscribed tickets will be honored. What is wanting in Fu is a predictive function. Fu describes elements with probabilistic features, but elements can be probabilistic without being predictive. Appellant therefore submits that Fu does not disclose “...the plurality of system policies comprises a **system prediction policy**...” as argued by the Examiner. Because Fu does not teach this system predictive policy, Appellant submits that independent claims 1, 20, 23, 24, and 30 are allowable, and that claims 2-9, 21, 22, 25-29 and 31-35 are allowable as depending from allowable claims.

#### Summary of the Examiner’s Answer (B) in relation to this argument

[004] The Examiner further argues that Chase’s teaching of a reallocating cluster resources based on a trigger event combined with Fu’s alleged teaching of a system prediction policy teaches a system prediction policy that regulates a system resource in response to a trigger event. Examiner’s Answer, page 10, lines 11-18.

#### Response

[005] Appellant disagrees and respectfully reaffirms the arguments raised against the rejection of claims 1-9 and 20-35 under 35 USC §103(a) set forth in the Appeal Brief and above for answer B. Appellant specifically asserts that because Fu does not disclose “...a **system prediction policy**...” as discussed above, the system prediction policy cannot be used to regulate the system in response to a trigger event. Chase does disclose examining virtual cluster status measures and executing a policy. Chase, section 4. However, there is no teaching in Chase or Fu of a system prediction policy. Because Fu lacks this system predictive policy, Appellant submits

that independent claims 1, 20, 23, 24, and 30 are allowable, and that claims 2-9, 21, 22, 25-29 and 31-35 are allowable as depending from allowable claims.

### **SUMMARY**

In view of the foregoing, Appellant respectfully asserts that each of the claims on appeal has been improperly rejected because the rejections under 35 U.S.C. §103(a) are improper. Therefore, Appellant respectfully requests reversal of the Examiner's rejections under 35 U.S.C. §103(a), and urges that pending claims 1-9 and 20-35 are ready for prompt allowance. Appellant appeals to the Board's objective and reasoned decision on this matter.

Respectfully submitted,

/Brian C. Kunzler/

Date: November 24, 2008  
8 East Broadway, Suite 600  
Salt Lake City, UT 84111  
Telephone (801) 994-4646  
Fax (801) 531-1929

Brian C. Kunzler  
Reg. No. 38,527  
Attorney for Appellant

## **10. RELATED PROCEEDINGS APPENDIX**

The Examiner's Answer agrees with the recitation for this section in the Appeal Brief.